REVIEWS

De la Responsabilité en matière d'Accidents du Travail. Commentaire de la loi du 9 avril, 1898, et des lois et decrets subsequents. By MAURICE BELLOM. Second edition. Pp. viii and 1008. Price 15 fr. Paris, 1903. Publisher: Arthur Rousseau.

The purpose of this bulky volume is to present a systematic exposition of the legislative provisions which in France govern the subject of accidents to employees. During the past few years France has enacted a system of labor laws which carry her far away from the old regime of *laisser faire.*

Under the *Code Civil* the workman who is injured while at work had to prove that the employer is to blame for the accident. The employer, in other words, was not responsible, and could not be held to pay damages if the accident was due to the fault of any laborer, or to simple hazard, or to the normal risks of the trade. The burden of proof thus rested upon the injured party as against the employer. The inadequacy, not to say the flagrant injustice, of this arrangement is, under present industrial conditions, perfectly manifest. German statistics show that of every 100 accidents to employees, the employer is to blame for 20, the laborer for 25, both together or outside parties for 8, and pure hazard or indeterminable causes for 47. That is to say, in nearly half the cases of accident under modern conditions of production, the workman cannot possibly shift upon the employer the responsibility for mishaps resulting in the loss of health, life, or limb. There was little hope, under the Civil Code, of obtaining an indemnity.

The desire among laborers to increase their productivity, however, leads them to dispense with the care and precaution that would make accidents less frequent and less disastrous. Even in those instances where, as a matter of fact, the employer was clearly to blame, the burden of proof fell upon the injured, and thus placed him in an unpleasantly offensive attitude toward his employer. It is always difficult for the victim of an accident to recall all the circumstances preceding and accompanying the mishap. It is next to impossible to prove the precise conditions under which it took place. Fellow-employees who witnessed the occurrence are not anxious to displease their employers by testifying truthfully and without restraint. The proverbial "delays of the law," moreover, are apt to make the indemnity so distant a prospect at best that the workman who is fortunate enough to win his case is unlikely to be greatly helped; for he most needs assistance immediately after the accident.

The existence of these conditions in France, and the recognized insufficiency of the Civil Code, led to frequent efforts to reform the legal régime established by the Code. Of these efforts, which have resulted in the gradual establishment of a more just and more adequate legal regulation of employers' liability for accidents, M. Bellom gives a clear and complete account.

In July, 1888, the Chamber of Deputies accepted a bill introducing the concept of "professional risk." This concept is based on the idea that industrial production exposes the laborer to certain risks; that as these risks are inherent in productive activity, the person who reaps the advantage of this activity

should also be held responsible for whatever accidents may occur, regardless of the question whether or not the employer is to blame personally. Accidents to laborers, in other words, should be looked upon by the employer in very much the same light as accidents to machinery. Whenever a machine breaks, the employer must pay the loss; and in the management of his business he regards such an occurrence as constituting one of the risks of trade, against which provision must be made. So also, in the sense of the French law, the employer should make provision against the possible necessity of paying an indemnity to injured employees. This bill, which also provided for a system of mutual insurance under government control, was not passed, because certain amendments made by the Senate did not meet with the approval of the government. Various other bills were introduced both by the Chamber and the Senate, some of them closely approaching the German system of obligatory insurance under State management. In the compromise bill which finally passed both houses in 1898, however, the idea of obligatory governmental insurance was abandoned, but that of professional risk was retained. The law thus enacted was incomplete, and particularly unfavorable to small producers. Shortly after its enactment, private insurance companies proceeded to exploit the situation to their own gain; and the vehement protests of employers led to the passage of another law, May 24, 1899, providing for a national "caisse d'assurance" against accidents, into which employers may pay premiums determined by the number of their employees and the hazardousness of their work. The government, in other words, undertook to provide insurance for employers, against the losses they might encounter by accidents to employees. The private companies still continued for the same purpose, but the government became a formidable competitor to these companies.

The provisions of the law of 1898, and of the numerous subsequent measures which have amended or completed it, or extended its provisions to new categories of laborers, are too many and too complex for summary here. It should be noted, however, that the law prescribes the amount of the indemnity to which the victim of an accident is entitled. This is an acceptance of the German principle governing this point, and has the advantage of eliminating controversies on the score of the monetary equivalent of the harm done the employee.

The first criticism which naturally occurs to the student of these elaborate accident insurance laws is their arbitrary character. Little or nothing is left to the discretion and judgment of the court. The legislator assumes, or appears to assume, that there must be no room for differences or distinctions save those laid down by law. If, however, the only alternative is between cut-and-dried regulation, on the one hand, and complete dependence on the precarious generosity of the employer, on the other, no lover of social justice can long hesitate in his choice.

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